BAIL SLIP

The Appellant in all Crl.A.Nos.400, 527 and 561/1999 was released on bail in and by the order of this Court in Crl.M.P.No.3856/99 dated 11.6.1999, Crl.M.P.No.5392/99 dt. 14.7.99, Crl.M.P.6196/99 dated 27.7.1999 respectively.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 02.03.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.Nos.400, 527 & 561 of 1999

K.Balu .. Appellant in all the above 3 cases

vs.

State rep by
The Inspector of Police,
The Special Police Establishment,
Central Bureau of Investigation/
Anti-Corruption Bureau.
Chennnai. .. Respondent in all the above 3 cases

Prayer: These appeals have been preferred against Judgment dated 07.09.1998, in C.C.No.18, 16 & 17 of 1998 respectively on the file of the Court of III additional District Judge/Special Judge for CBI Cases, Coimbatore.

For Appellant : Mr.Veera Kathiravan (in all the above 3 cases)
For Respondent : Mr.N.Chandrasekran, Spl. Public Prosecutor for CBI cases, (in all the above 3 cases)

JUDGMENT

These appeals have been preferred against Judgments in C.C.No.18, 16 & 17 of 1998 respectively, on the file of the III Additional District Judge/Special Judge for CBI cases, Coimbatore. The accused has been charged under Section 409 IPC & 477 IPC and under Section 13(1)(c) r/w 13 (2) of the Prevention of Corruption Act in all the three cases. There are totally three charges under the above provisions of law in each of the above said three calendar cases. Even though the accused is one and the same person viz. K.Balu S/o.Kali separate trial has been conducted in each of the above said cases and separate judgments have been delivered by the learned trial Judge.

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2. In Crl.A.400/1999 (C.C.No.18/1998) :-

2(a) On appearance of the accused on summons the learned trial judge has furnished copies under Section 207 of Cr.P.C and when charges were framed under Section 409 IPC and 477(a) IPC (4 counts) and under section 13(1)(c) r/w 13(2) of the Prevention of Corruption Act 1988 and explained to the accused and when questioned the accused pleaded not guilty. Before the trial Court P.Ws.1 to 9 were examined and Ex.Ps.1 to 62 were marked.

2(b) P.W.1 is the Intelligence Officer in United India Insurance Company. The accused was working as a cashier in United India Insurance Company. P.W.1 would depose that on the basis of the complaint received in the United India Insurance Company at Dharmapuri Branch, he conducted enquiry and perused ACS-3 receipt book for the period from 1987 to 1990, ACS-4, premium register and ACS-50 daily collection register and also bank challans and the result of the enquiry revealed that: i) the accused had misappropriated the premium amount paid in the United India Insurance Company at Dharmapuri Branch as a cashier. Out of the collected premium amount the accused had deposited only a portion of the same and misappropriated the remaining portion. ii) The accused has also misappropriated the amount which were deposited by cash by showing the same as received by way of cheque thereby falsified the documents. iii) As per ACS-3 receipt book, receipts will be issued for the premium amount paid for the policy. In some of the ACS receipts they were cancelled and the amount deposited under the receipts were misappropriated. Those receipts were prepared only by the accused. Usually 5 receipts will be prepared under ACS-3 receipt book. Original receipt will be issued to the policy holder. If the premium amount is deposited by cash the 2nd & 3rd copies of the receipt will be kept in the office. If the premium amount was deposited by way of cheque the receipts 2 & 3 will be sent to the bank. The 2nd copy will be kept in the bank and the 3rd copy will be sent to the insurance company. 4th copy will be kept with the policy file. 5th copy will be kept in ACS-3 receipt book itself. Only on the basis of ACS-3 receipt, ACS-4 register will be maintained. P.W.1 would further depose that the accused was incharge of preparing ACS- 3, 4 & 50 registers and that in his enquiry he came to know that a sum of Rs.49,545/- has been misappropriated by the accused. When the accused was personally questioned by P.W.1, he has admitted for having misappropriated the said amount and gave a confession statement Ex.P.1 and that now the accused is not in service since he was dismissed from service.

2(c) P.W.2 is the Senior Divisional Manager of United India Insurance Company, Madras Divison, Office No.7. He was the then Divisional Manager of United India Insurance Company at Hosur. United India Insurance Company Dharmapuri Branch came within the jurisdiction of Hosur Office. He speaks about the manner under which ACS-3, 4 & 50 registers are maintained and that the accused was working as a cashier in United India Insurance Company at Dharmapuri Branch.

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2(d) P.W.3 is the Administrative Officer United India Insurance Company Ltd. He would also depose to the effect that the accused was working as a cashier of United India Insurance Company at Dharmapuri Branch, which come within the jurisdiction of United India Insurance Company of Hosur and that the insurers of the vehicle used to pay the premium and after the receipt of the premium amount the same will be entered in ACS-3 and the total amount collected under ACS-3, receipt book, will be carried over in ACS-4 register and every month a copy of the accounts in ACS-4 will be sent to the Divisional Office and ACS-50 register will contain the particulars of the amount in hand and the the particulars about the cheque. The amount collected on a particular day will be sent to Canara Bank for deposit through Pay-in-slip. It is the duty of the cashier to verify the counter-foil kept in the office with the seal of the bank. Canara Bank at the end of every week use to sent the amount deposited by the United India Insurance Company to the State Bank of India. On the basis of the statement sent by the Canara Bank, the cashier of Dharmapury Branch of United India Insurance Company use to prepare reconciliation statement and forward the same to the Divisional Office and that the accused on 9.4.1990 had collected the premium amount of Rs.10,299/- from various policy holders. Ex.P.2 is the receipt (4 in number) of ACS-4 register. But the accused had deposited only Rs.9,543/- with the Canara Bank on the next day. Ex.P.3 is the pay-in-slip. Those documents were written by the accused in his own hand. On 10.4.1990 the accused had colleted Rs,4698/- by cash. Ex.P.4 to P.20 are the receipts. But the accused has shown in ACS-4 receipts only a sum of Rs.4,694/- was collected towards premium. Ex.P.21 (2 pages) is for ACS-4 register. On the next day the accused had deposited only Rs.4,440/-. Ex.P.22 is the pay-in-slip. On 4.4.1990 the accused had collected Rs.3,646/- from various policy holders. Ex.P.23 (3 chits) in ACS-4 receipt is the evidence for the collection of Rs.3,646/-. The accused had deposited Rs.2,986/- on 5.4.1990. Ex.P.24 is the pay-in-slip for the deposit of the said amount with the Bank. The said pay-in-slip was also prepared by the accused. On 13.07.1990 the accused had collected Rs.1,245/- from one Vijayan by way of cash. Ex.P.25 is the copy of the accounts department receipt to evidence the said collection. In Ex.P.26 the accused had stated that the said amount was collected by cash. But the said amount was not deposited with the bank. In ACS-4 register, the accused has noted that he had received the said amount by way of cash and striked out and has written as though he has received by cheque. Ex.P.27 is the said entry. The said chegque was also not sent to the bank. On 13.07.1990 the accused has collected Rs.1,513/- by way of cash from one Selvaraj. Ex.P.28 is the copy of the Accounts Department. In Ex.P.28 the accused has stated that the said amount was collected by way of cheque. But in the copy of the police, Ex.P.29 he has mentioned that the said amount was collected by him by way of cash. But neither cash nor cheque was deposited by him in the Bank. But in the ACS-4 receipt Ex.P.30 he has mentioned as though he had received the said amount by way of cheque. On 31.8.1990 the accused had collected Rs.11,090/- from 14 persons and prepared ACS-3. Ex.P.31 to P.44 are the receipts. But the accused has

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not deposited the entire amount, but only a portion viz.Rs.9,090/- on 3.9.1990. Ex.P.45 is the pay-in-slip was also prepared by the accused. On 20.9.1990 the accused had collected Rs.11,233/- by way of cash from10 persons and he has prepared ACS-3. Ex.P.46 to 55 receipts were prepared by the accused. But the accused has not deposited the entire amount but he has deposited only Rs.10,233/-. Ex.P.56 is the pay-in-slip. Ex.P.57 is the confession statement signed by the accused before the Regional Manager, United India Insurance Company, Coimbatore, dated 15.11.1990.

2(e) P.W.4 is the Assistant Divisional Officer on United India Insurance Company, Dindugal. He was working as Administrative Officer of the United India Insurance Company at Hosur from October 1987 to July 1989. He would depose that he used to check the amount deposited with Canara Bank from each branch of the United India Insurance Company with that of the statement of accounts received from Canara bank and that from Dharmapuri Branch of United India Insurance Company the accounts were not submitted every month regularly to the Regional Office and objecting this irregular filing of the statements he sent letters to the United India Insurance Company at Dharmapuri Branch. He has further deposed that it is the duty of the cashier to deposit the collected amount with Canara Bank.

2(f) P.W.45 is the Senior Manager of Indian Overseas Bank, Delhi Branch. He was working as Manager of Indian Overseas Bank, Dharmapuri from April 1990 to September 1992. On 13.7.1990 one Vijayan has not given any cheque for Rs.1,245/-, cheque No.651146 and that he has not received any cheque at the Indian Overseas Bank at Dharmapuri. Ex.P.58 is the certificate given by him to the effect that he has not received Ex.P.25-cheque in the bank.

2(g) P.W.6 was the then Indian Bank Manager at Palacode from August 1990 to August 1995. After perusing the relevant register he informed the Inspector of Police CBI that in his bank a cheque drawn for Rs.1,513/- bearing No.117164 by one Selvaraj was not received. Ex.P.59 is the certificate given by him to that effect.

2(h) P.W.7 is the Development Officer of the United India Insurance Company, Dharmapuri Branch. The accused was working in the same branch from 1986 to 1990 and that he had collected the insurance premium from the workers of United India Insurance Company at Dharmapuri Branch and handed over the same to the accused who was working as a cashier at that time. He had collected the insurance amount for a lorry bearing registration No.6799 from one Chellappan less Rs.836/- and paid to the then cashier-accused and that the cashier had noted the same in the accounts and that on 21.7.1990 he had collected Rs.836/- from the said Chellappan and paid the same to the accused. But the accused has not given any receipt for the payment of Rs.836/-. Only on 20.8.1990 he gave receipt. Ex.P.60 is the said receipt. The said receipt was never cancelled or altered. P.W.7 has also identified the signatures of the accused in Ex.P.2 to P.57 and Ex.P.60.

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2(i) P.W.8 is the Manager of Canara bank, Dharmapuri Branch, from 1989 to 1992. At that time the United India Insurance Company, Dharmapuri Branch, was having a current account No.U.2. P.W.8 would depose that the accused as cashier of United India Insurance Company used to deposit the amount collected in the United India Insurance Company office through pay-in-slip and after receiving the amount a counter-foil will be given to the person who has deposited the amount. Ex.P.25 and P.28 are the forms issued by the bank at the time when the United India Insurance Company deposits the amount through cheques. He has further deposed that the endorsement in red ink in Ex.P.25 & P.28 have not been made by the employee of his bank. He has further deposed that in Ex.P.25 & P.28 there is no seal of Canara Bank.

2(j) P.W.9 is the Investigation Officer, who would depose that Deputy Superintendent of CBI has registered a case against the accused under Section 409, 420, 467, 468 & 471 r/w 13(1)(c) & (d) in Cr.No.56(a)/1990 and that the said complaint was forwarded to the Special Court of CBI at Coimbatore. Ex.P.61 is the FIR, which contains the signature of Mr.M.M.Rao, DSP. He had conducted the investigation after getting necessary permission from the Chief Metropolitan Magistrate, Chennai under Ex.P.62. He has examined the witnesses and recorded their statements. After completing the investigation he had laid chargesheet against the accused on 27.3.1991 under sections 409, 477A IPC and under Section 13(2) r/w 13(1) (c)(d) of the Prevention of Corruption Act, 1988. He has further deposed that even at the initial stage of the investigation itself the accused was dismissed from service.

2(k) When incriminating circumstances were put to the accused, accused pleaded not guilty. After going through the evidence both oral and documentary the learned trial Judge has come to the conclusion that the prosecution has proved the guilty of the accused under Section 409, 477(a) IPC and under section 13(1)(c) r/w 13(2) of the Prevention of Corruption Act, 1988, and convicted and sentenced the accused to undergo one year RI under each of the above mentioned provisions of law. Aggrieved by the findings of the learned trial Judge, the accused has preferred this appeal.

2(L) Now the point for determination in this appeal is whether the guilt against the accused under Section 409 & 477A IPC and under Section 13(1)(c) r/w 13(2) of the Prevention of Corruption Act, 1988, has been proved beyond any reasonable doubt to warrant conviction under the above provisions of law?

3. In Crl.A.527/1999 (C.C.No.16/1998) :-

3(a) The short facts of the prosecution case are as follows:- While the accused was working as cashier of the United India Insurance Company at Dharmapuri Branch during 1987-1990 the accused had collected Rs.38,194/- from the insurance policy holders on various dates between

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3.3.1988 and 16.2.1989. But he has deposited a sum of Rs.26,925/- alone with the Canara Bank thereby misappropriated a sum of Rs.11,269/- and in the receipt book ACS-4 and premium collection register ACS-3 a sum of Rs.3,630/- received under receipt No.141928 dated 5.4.1988 for the payment received by cash, created false entries for the said amount and thereby misappropriated the said sum of Rs.3,630/-. In like manner on 30.12.1988 as per receipt No.363089 the accused had received a cheque for Rs.1,812/- but by making false entries and creating false documents had misappropriated the said amount. On 16.2.1989 under receipt No.363437 the accused had received Rs.2,327/- by way of cheque but by making false entries had misappropriated the said amount. On 2.8.1988 the accused had deposited Rs.1,925/- but in the counter-foil of the bank's chellan he has falsely credited the amount as Rs.2,925/- instead of Rs.1,925/-. On 14.2.1989 the accused had deposited Rs.16,979/- in Canara bank. But in the counter-foil of the bank's chellan he had falsely made corrections to the effect as he has deposited a sum of Rs.17,979/- instead of Rs.16,979/- and that while the accused was working as a public servant as a cashier of United India Insurance Company, Dharmapuri Branch, to get wrongful gain by misusing his power misappropriated a sum of Rs.11,269/-. The complaint was taken on file by the I Additional Sessions judge (Special Court) and on appearance of the accused on summon copies under Section 207 of Cr.P.C were furnished to the accused and on the basis of the complaint the learned trial judge framed charges under Section 409, 477A IPC and also under Section 13(1)(c) r/w 13(2) of the Prevention of Corruption Act, 1988 and the charges levelled against the accused were explained to the accused and when questioned the accused pleaded not guilty. On the side of the prosecution P.Ws.1 to 7 were examined and Ex.P.1 to P.1o were marked.

3(b) P.W.1 is the Vigilance Officer of the United India Insurance Company during the relevant point of time. As per the instructions of the Chief Vigilance Officer he proceeded to the United India Insurance Company, Dharmapuri Branch, to investigate in respect of the complaint of misappropriation received and conducted an investigation. During his investigation he had checked ACS-3 receipt book, ACS-4 Premium Register and ACS-50 Daily collection register relating to the period 1987-1990 and at the result of his investigation it was brought to light that the accused has misappropriated money of the United India Insurance Company by three ways. After misappropriating a portion of the premium amount by the policy holders and to conceal the said offence he had falsely created the documents by making corrections in the counter-foils and also making correction in the bank reconciliation statement. Secondly the accused had misappropriated the amount deposited by the policy holders who have paid the premium by way of cash, the accused has falsified the documents so as to appear that those amounts were deposited by policy holders by way of cheque. After depositing the bogus cheques in the bank for collection and showing those cheuqes as pending outstanding for collection, the accused had misappropriated the cash deposited towards premium by the policy holders. Thirdly if a policy holder deposits the premium amount a receipt will be issued under ACS-3 receipt book,

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thereafter only policy will be issued to the policy holder. As per ACS-3 receipts only after the receipt of the premium and while the policy was in force the accused had cancelled ACS-3 receipts and misappropriated the amount paid by the policy holders under Acs-3. Even though the accused had cancelled ACS-3 receipts actually as against the said policy holder the policy was in force. Usually 5 copies will be taken for the ACS receipts and the original was issued to the policy holder and 2nd & 3rd copies will be kept in the office and if the premium amount was paid in cash. In case if the premium amount was paid in cheque the said 2nd & 3rd copies of ACS-3 receipts will be sent to concerned bank. The bank will retain the 2nd copy and forward the 3rd copy to the insurance company. The bank will acknowledge for having received the 2nd copy in the 3rd copy itself. The 4th copy will be kept in the file and 5th copy will be kept in ACS-3 book itself. On the basis of Acs-3 receipts, ACS-4 register will be maintained and on the basis of ACS-3 receipt book and on the basis of ACS-4 register, ACS-50 daily collection statement will be prepared and on the basis of the ACS-50 register bank challan will be prepared and the amount will be deposited in the bank. The accused was incharge of preparing ACS-3, 4 & 50 registers. P.W.1 would further depose that during his investigation it was brought to light that a sum of Rs.49,545/- was the amount misappropriated by the accused and when P.W.1 interrogated the accused, the accused had admitted for having misappropriated the amount belonging to the United India Insurance Company and to that effect he gave a confession statement dated 27.09.1990 which is Ex.P.1 and that subsequent to his enquiry the accused was dismissed from service.

3(c) P.W.2 is the Senior Divisional Manager of the United India Insurance Company, Division No.7, Madras. He was working as a Divisional Manager in the United India Insurance Company, Hosur from May 1989 to July 1993. The United India Insurance Company, Dharmapuri Branch, comes within the jurisdiction of the Hosur Division. He speaks about the procedure in taking vehicular insurance. If a person wants to take insurance in the United India Insurance Company he should give a proposal to the Department and that on the basis of the proposal the amount to be paid towards the risk is to be assessed and informed the said person. It is the option of that person to pay the premium amount by way of cheque or by Demand Draft to the cashier. After payment of the said premium amount ACS-3 receipt will be issued. There will be one original ACS-3 receipt and 4 copies for the same and the original receipt will be handedover to the policy holder and the remaining 4 corban copies will be kept in various branches of the United India Insurance Company. One copy of ACS-3 receipt will be kept in the receipt book and the said receipt the particulars regarding the payment was made either by cash or by cheque will be noted. Every days collection will be reflected in ACS-4 register. The collection made through the cheque as well as the collection made through cash will be shown separately in ACS-4 register. ACS-5 is being maintained in the United India Insurance Company. The said register will contain the particulars regarding what was the amount under each head and who had deposited the premium amount and whether the premium was paid directly by

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the policy holder or by the agent. Apart from those registers another register by name ACS-50, daily register, is also being maintained in the United India Insurance Company. Every day collection through cash and cheque will be entered in the said register. Even pending balance and closing balance will be noted in the said register. The collection particulars noted in ACS-4 register as well as the collection made under Ex.A.3 register will tally with the collection particulars maintained in ACS-50 register. If there is any discrepancy found in the ACS-50 register then the cashier alone is responsible for the same. It is the usual practise in the United India Insurance Company that the collected amount both by way of cheque as well as by way of cash are to be remitted with the bank on the following day through challan. After receiving the first premium amount either by way of cheque of by way of cash the policy will be issued. If the cheque is dishonoured then the insurance policy will be cancelled. Every month a statement will be sent by the bank to the insurance company branch containing the particulars regarding the amount received by the branch every month and also about the cheques and the amount collected in the account of the concerned branch of the United India Insurance Company. A copy of ACS-50 register will also be sent to the Divisional Office. Reconciliation statement will be prepared on the basis of the copy of ACS-50 register and also on the basis of monthly statement of the bank in divisional office. P.W.2 would also corroborate the evidence of P.W.1 to the effect that the accused was working in the United India Insurance Company, Dharmapuri Branch, while he was working as Senior Divisional Manager of Hosur Divisional office.

3(d) P.W.3-Balakrishnan, is the then Assistant Administrative Officer of the United India Insurance Company, Hosur branch, during 1992. At that time the accused was working as a cashier of United India Insurance Company at Dharmapuri Branch. The United India Insurance Company, Dharmapuri Branch, comes within the jurisdiction of Hosur division of the United India Insurance Company. He would depose that all sorts of vehicles will be insured in the United India Insurance Company, Dharmapuri Branch and on payment of the first premium by the policy holder receipts will be issued by the cashier. As per ACS-3 receipt book, 5 copies will be prepared and the original receipt will be issued to the policy holder who had deposited the premium and another receipt will be kept in the receipt book itself. The 3rd copy will be sent to the account's section. 4th copy will be sent to underwriting section. 5th copy will be sent to the bank through pay-in-slip. As soon as the payment is made to the cashier he has to prepare 5 receipts. The amount collected in a day through ACS-3 register by the cashier will be entered in ACS-4 register. The cashier shall deposit every days collection with the Canara Bank and for that purpose he has to prepare a pay-in-slip. After the deposit of the amount in the bank by way of pay-in-slip the counter-foil will be sent to his office with the seal of the bank at the end of every week. Canara Bank, Dharmapuri Branch, will forward the said amount deposited by the United India Insurance Company, Dharmapuri Branch, to the State Bank of India, Dharmapuri Branch. The above procedure is followed by Canara Bank.

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However at the request of the United India Insurance Company, Dharmapuri Branch, Canara Bank will also sent a statement containing the particulars regarding the amount forwarded to the State Bank of India by Canara Bank. Further, Canara Bank use to sent a statement containing the amount deposited by the United India Insurance Company in a month and on the basis of the monthly statement submitted by the cashier, Canara Bank will prepare a reconciliation statement and sent the same to the Divisional office and the divisional office use to check the said statement with that of the statement containing the particulars regarding the amount sent to the State Bank of India, Hosur, every month by Canara Bank. P.W.3 would also depose that he knows the signature of the accused. He further deposed that on 3.3.1988 the accused had collected Rs.7,548/- by way of cash and a sum of Rs.1,870/- way way of cheque from several persons. After receipt of Rs.7,548/- the cashier/accused had entered the same on the back of ACS-3 receipt on 3.3.1988. The said receipt is Ex.B.2. The receipt number for the said receipt is 141353. But in ACS-50 he has only noted that he has collected Rs.6548/- alone by way of cash on 3.3.1988. The said entry is Ex.P.3. On 3.3.1988 the accused has noted in ACS-50 that he has collected only Rs.6,548/- and on 4.3.1988 by way of pay-in-slip he has deposited Rs.6,548/- with Canara Bank. Ex.P.4 is the relevant document and Ex.P.5 is the counter-foil of the pay-in-slip. Ex.Ps.3 to P.5 were prepared and signed by the accused. On 1.8.1988 the accused had collected Rs.2,925/- from various persons and made Ex.P.6 entries in ACS-50 register. But the accused had deposited only Rs.1,925/- with Canara Bank under Ex.P.7. In the counter-foil Ex.P.8 the accused had originally written the amount deposited as Rs.1,925/- but he has corrected the same as Rs.2,925/-. On 6.2.1999 the accused has collected Rs.1,973/- from various persons. Ex.P.9 is the relevant entries for the same in ACS-50 register. Ex.P.10 is the endorsement on the back of Ex.P.9 regarding the particulars of the amount collected and from whom the amount was collected and when the amount was collected. The accused without depositing the entire amount deposited only Rs.1,477/- with Canara Bank on the following day under Ex.P.11. In Ex.P.12, counter-foil for Ex.P.11, originally the amount was mentioned as Rs.1,473/- but subsequently it has been corrected as Rs.1,973/-. Ex.P.11 and Ex.P.12 were written by the accused in his own hand. ON 16.2.1989 the accused had received a sum of Rs.2327/- from Mageshwari Enterprises. Ex.P.13 is the ACS-3 receipt prepared by the accused. While entering the said amount in ACS-50 the accused had noted that he has received a cheque for Rs.2,327/- instead of mentioning that he has received cash. The said particulars have been clearly endorsed on the back side of Ex.P.14, which is Ex.P.15. Even though the said amount of Rs.2,327/- was received by the accused by way of cash he has not deposited the said amount on the following day with the bank. Ex.P.16 is the counter-foil which shows that he has deposited except Rs.2,327/- with the bank. Ex.P.17 is the confession statement of the accused dated 15.11.1990 addressed to Regional Manager, United India Insurance Company, Coimbatore.

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3(e) P.w.4 is the then Assistant Administrative Officer of the United India Insurance Company, Hosur, from October 1987 to July 1989. The United India Insurance Company, Dharmapuri Branch, comes within the jurisdiction of Regional Office of Hosur. Every month from every branch office a statement containing every months deposit by the branch offices to the Canara Bank will be furnished to the Regional Office at Hosur. Canara Bank also use to send a statement showing every months deposit by the United India Insurance Company, Dharmapuri Branch, and that in the Regional Office at Hosur, the statements will be scrutinized. But the United India Insurance Company, Dharmapuri Branch was not very regular in sending the above said statement. It has failed to submit the statement every month but it use to send the statement only for alternative months and some times it also send the account in a bulk. Noting the irregularity in receiving the statements, P.W.4 has sent a letter to the Dharmapuri Branch of United India Insurance Company. He would depose that he was incharge of scrutinizing the statement of account sent by Canara Bank with that of the statement of accounts submitted by the branch office of the United India Insurance Company and this fact was also informed by P.W.4 to the Vigilence Officer P.W.1 during his enquiry.

3(f) P.W.5 is the Development Officer of the United India Insurance Company, Dharmapuri Branch. He would also depose to the fact that from 1980 to 1990 the accused was working as a cashier in United India Insurance Company. He would depose that he has also paid the premium for the insurance policy with the accused while he was working as a cashier in the said United India Insurance Company and that he knows the signature of the accused. He would identify that Ex.Ps.2 to P.17 contain the signature of the accused.

3(g) P.W.6-Chokkalingam, is the then Manager of Canara Bank, Dharmapuri District during August 1989 till July 1992. He would depose that United India Insurance Company, Dharmapuri Branch, had an account with the Canara Bank and the said account number is U-2 and that the cashier of the said insurance company use to deposit the amount collected by the insurance company, Dharmapuri Branch on the very next day of collection. At the time of depositing the said amount he use to give pay-in-slip for the amount to be deposited. The said pay-in-slip was received by the bank and after receiving the said amount, the pay-in-slip will be signed by the officer of the bank and given the cashier who deposits the amount. Ex.P.11 was shown by the Investigation Officer at the time when he was interrogated by the Investigation Officer. P.W.6 would also depose that at the time of interrogation Ex.P.7 was show to him by the investigation officer and there was number of corrections found in Ex.P.7. He has further deposed that there is a difference between the original of the pay-in-slip and the counter-foil of the same under Ex.P.7.

3(h) P.W.7-Thiru.S.Vaithyanathan, is the Investigation Officer in this case. He would depose that as per the directions given by his Superintendent of Police Thiru.M.M.Rao, an Additional Superintendent of

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Police, has filed a case in Cr.No.56(a)/1990 against the accused under Section 409, 420, 467, 468, 471 r/w 467 r/w 477A IPC and under Section 13 (2) r/w 13(1)(c) & (d) of the Prevention of Corruption Act, 1988. Ex.P.18 is the FIR. The said case was sent to him by the Superintendent of Police for his investigation. After getting the permission from the Chief Metropolitan Magistrate, Chennai, he took up the investigation and went to the United India Insurance Company, Dharmapuri Branch, and perused the registers, which were sent by the United India Insurance Company, Dharmapuri Branch, by post. He examined the witnesses and recorded their statements on 11.2.1991 and 12.2.1991 and 1.3.1991. He has also examined the leave officer Sundararaj and after completing the investigation he has filed charge sheet under Section 409, 477A IPC and under Section 13(2) r/w 13(1)(c) & (d) of the Prevention of Corruption Act, 1988, on 27.3.1991.

3(i) When incriminating circumstances were put to the accused the accused denied his complicity with the crime. The accused has not examined any witness. On the basis of the above said oral and documentary evidence let in before the trial Court, the learned trial Judge has come to the conclusion that the prosecution has proved the guilt of the accused under Section 409, 477A IPC and also under Section 13(1)(c) & (d) r/w 13 (2) of the Prevention of Corruption Act, 1988, and accordingly convicted and sentenced the accused to undergo three years RI under each of the provisions of law. The trial judge has not slapped any fine on the accused. Aggrieved by the findings of the learned trial Judge, the accused has preferred this appeal.

3(j) Now the point for determination in this appeal is whether the accused is guilty under Section 409, 477(A) IPC and under Section 13 (1)(c) & (d) r/w 13(2) of the Prevention of Corruption Act, 1988.

4. In Crl.A.561/1999 (C.C.No.17/1998) :-

4(a) This appeal has been preferred by the accused in C.C.No.17/1998 on the file of the III Additional District Judge/Special Judge for CBI Cases, Coimbatore. The accused was charged under Section 409, 477A IPC and also under Section 13(1)(c) & (d) r/w 13(2) of the Prevention of Corruption Act.

4(b) The short facts of the prosecution case are as follows:-The accused was working as a cashier in United India Insurance Company, Dharmapuri Branch, from 8.3.1989 to 19.2.1990 and during the relevant period the accused had collected Rs.87,125.60 from the policy holders by way of premium but he has deposited only Rs.65,314.60 with the Canara Bank thereby misappropriated the balance of Rs.21.811/-. On 1.3.1989 the accused had collected Rs.8,200/- under receipt No.427610 by way of cash, but in ACS-3 and ACS-4 registers he had entered as though the said amount of Rs.820/- was paid by way of cheque by the policy holder thereby misappropriated the said amount. On 7.3.1989 the accused had created false receipt to show that on 7.3.1989 he has collected Rs.138/- under receipt No.427649 but he has misappropriated the same without depositing

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the same with the Canara Bank. On 27.4.1989 the accused has collected Rs.3,141/- as per receipt No.98867 and has made wrong entries in the relevant register thereby misappropriated the said amount of Rs.3,141/-. On 7.5.1989 the accused had collected Rs.570/- under receipt NO.97935 but he has wrongly entered in the relevant register to the effect that the said amount of Rs.570/- was received by way of cheque. Between 8.3.1989 and 19.2.1990 when the accused was a public servant working as a cashier in the United India Insurance Company, Dharmapuri Branch the accused had misappropriated a sum of Rs.21,811/- deposited by the policy holders for the respective insurance policies and without depositing the said amount with the bank he had misappropriated the same. Hence, the complaint.

4(c) The case was taken on file in C.C.No.22/1990 by the learned I Additional Sessions Judge, Coimbatore, subsequently the case was transferred to III Additional District Judge/Special Judge for CBI cases, Coimbatore and renumbered as C.C.No.17/1998.

4(d) On appearance of the accused on summons copies under Section 207 of Cr.P.C were furnished to the accused and charges were framed under Section 409, 477A IPC and under section 13(1)(c) & (d) r/w 13(2) of the Prevention of Corruption Act, 1988, and when questioned the accused pleaded not guilty. Before the trial Court P.W.1 to P.W.8 were examined and Ex.Ps.1 to P.46 were marked.

4(e) P.W.1 is the Vigilance Officer of the United India Insurance Company. He would depose that during 1990 on the basis of a complaint of misappropriation he proceeded to the United India Insurance Company office at Dharmapuri and conducted enquiry. During his enqiry he had checked ACS-3 receipt book, ACS-4 Premium Register and ACS-50 Daily collection register relating to the period 1987-1990 and at the result of his investigation it was brought to light that the accused has misappropriated money of the United India Insurance Company by three ways. After misappropriating a portion of the premium amount by the policy holders and to conceal the said offence he had falsely created the documents by making corrections in the counter-foils and also making correction in the bank reconciliation statement. Secondly the accused had misappropriated the amount deposited by the policy holders who have paid the premium by way of cash, the accused has falsified the documents so as to appear that those amounts were deposited by policy holders by way of cheque. After depositing the bogus cheques in the bank for collection and showing those cheuqes as pending outstanding for collection, the accused had misappropriated the cash deposited towards premium by the policy holders. Thirdly if a policy holder deposits the premium amount a receipt will be issued under ACS-3 receipt book, thereafter only policy will be issued to the policy holder. As per ACS-3 receipts only after the receipt of the premium and while the policy was in force the accused had cancelled ACS-3 receipts and misappropriated the amount paid by the policy holders under Acs-3. Even though the accused had cancelled ACS-3 receipts actually as against the said policy holder the policy was in force. Usually 5 copies

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will be taken for the ACS receipts and the original was issued to the policy holder and 2nd & 3rd copies will be kept in the office and if the premium amount was paid in cash. In case if the premium amount was paid in cheque the said 2nd & 3rd copies of ACS-3 receipts will be sent to concerned bank. The bank will retain the 2nd copy and forward the 3rd copy to the insurance company. The bank will acknowledge for having received the 2nd copy in the 3rd copy itself. The 4th copy will be kept in the file and 5th copy will be kept in ACS-3 book itself. On the basis of Acs-3 receipts, ACS-4 register will be maintained and on the basis of ACS-3 receipt book and on the basis of ACS-4 register, ACS-50 daily collection statement will be prepared and on the basis of the ACS-50 register bank challan will be prepared and the amount will be deposited in the bank. The accused was incharge of preparing ACS-3, 4 & 50 registers. P.W.1 would further depose that during his investigation it was brought to light that a sum of Rs.49,545/- was the amount misappropriated by the accused and when P.W.1 interrogated the accused, the accused had admitted for having misappropriated the amount belonging to the United India Insurance Company and to that effect he gave a confession statement dated 27.09.1990 which is Ex.P.1 and that subsequent to his enquiry the accused was dismissed from service.

4(f) P.W.2-Ramprasath is the Senior Divisional Manager of the United India Insurance Company, Division No.7, Madras. He was working as Divisional Manager in the United India Insurance Company, Hosur from May 1989 to July 1993. The United India Insurance Company, Dharmapuri Branch, comes within the jurisdiction of the Hosur Division. He speaks about the procedure in taking vehicular insurance. If a person wants to take insurance in the United India Insurance Company he should give a proposal to the Department and that on the basis of the proposal the amount to be paid towards the risk is to be assessed and informed the said person. It is the option of that person to pay the premium amount by way of cheque or by Demand Draft to the cashier. After payment of the said premium amount ACS-3 receipt will be issued. There will be one original ACS-3 receipt and 4 copies for the same and the original receipt will be handedover to the policy holder and the remaining 4 corban copies will be kept in various branches of the United India Insurance Company. One copy of ACS-3 receipt will be kept in the receipt book and the said receipt the particulars regarding the payment was made either by cash or by cheque will be noted. Every days collection will be reflected in ACS-4 register. The collection made through the cheque as well as the collection made through cash will be shown separately in ACS-4 register. ACS-5 is being maintained in the United India Insurance Company. The said register will contain the particulars regarding what was the amount under each head and who had deposited the premium amount and whether the premium was paid directly by the policy holder or by the agent. Apart from those registers another register by name ACS-50, daily register, is also being maintained in the United India Insurance Company. Evey day collection through cash and cheque will be entired into the said register. Even pending balance and closing balance will be noted in the said register. The collection

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particulars noted in ACS-4 register as well as the collection made under Ex.A.3 register will tally with the collection particulars maintained in ACS-50 register. If there is any discrepancy found in the ACS-50 register then the cashier alone is responsible for the same. It is the usual practise in the United India Insurance Company that the collected amount both by way of cheque as well as by way of cash are to be remitted with the bank on the following day through challan. After receiving the first premium amount either by way of cheque or by way of cash the policy will be issued. If the cheque is dishonoured then the insurance policy will be cancelled. Eveny month a statement will be sent by the bank to the insurance company branch containing the particulars regarding the amount received by the branch every month and also about the cheques and the amount collected in the account of the concerned branch of the United India Insurance Company. A copy of ACS-50 register will also be sent to the Divisional Office. Reconciliation statement will be prepared on the basis of the copy of ACS-50 register and also on the basis of monthly statement of the bank in divisional office. P.W.2 would also corroborate the evidence of P.W.1 to the effect that the accused was working in the United India Insurance Company, Dharmapuri Branch, while he was working as Senior Divisional Manager of Hosur Divisional office.

4(g) P.W.3-Balakrishnan, is the then Assistant Administrative Officer of the United India Insurance Company, Hosur branch, during 1992. At that time the accused was working as a cashier of United India Insurance Company at Dharmapuri Branch. The United India Insurance Company, Dharmapuri Branch, comes within the jurisdiction of Hosur division of the United India Insurance Company. He would depose that all sorts of vehicles will be insured in the United India Insurance Company, Dharmapuri Branch and on payment of the first premium by the policy holder receipts will be issued by the cashier. As per ACS-3 receipt book, 5 copies will be prepared and the original receipt will be issued to the policy holder who had deposited the premium and another receipt will be kept in the receipt book itself. The 3rd copy will be sent to the account's section. 4th copy will be sent to underwriting section. 5th copy will be sent to the bank through pay-in-slip. As soon as the payment is made to the cashier he has to prepare 5 receipts. The amount collected in a day through ACS-3 register by the cashier will be entered in ACS-4 register. The cashier shall deposit every days collection with the Canara Bank and for that purpose he has to prepare a pay-in-slip. After the deposit of the amount in the bank by way of pay-in-slip the counter-foil will be sent to his office with the seal of the ban k at the end of every week. Canara Bank, Dharmapuri Branch, will forward the said amount deposited by the United India Insurance Company, Dharmapuri Branch, to the State Bank of India, Dharmapuri Branch. The above procedure is being followed by Canara Bank. However at the request of the United India Insurance Company, Dharmapuri Branch, Canara Bank will also sent a statement containing the particulars regarding the amount forwarded to the State Bank of India by Canara Bank. Further, Canara Bank use to sent a statement containing the amount deposited by the United India Insurance Company in a

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month and on the basis of the monthly statement submitted by the cashier, Canara Bank will prepare a reconciliation statement and sent the same to the Divisional office and the divisional office use to check the said statement with that of the statement containing the particulars regarding the amount sent to the State Bank of India, Hosur, every month by Canara Bank. P.W.3 would also depose that he knows the signature of the accused. He further deposed that on 7.3.1989 from one Kumarasamy the accused had received Rs.138/- by way of cash. Ex.P.2 is the receipt for ACS-3 receipt book. But in ACS-50 register he had mentioned on the back side of the receipt as the said amount was paid by Kumarasamy by way of cheque instead of mentioning as by way of cash. Ex.P.3 is the said endorsement. The accused has not deposited the said amount with the Canara Bank but he has deposed that the remaining amount of Rs.507/- was collected on the said date. Ex.P.4 is the document to show that the accused deposited only Rs.507/-. On 10.3.1989 the accused had collected Rs.3,720/- from various persons under Ex.Ps.5 to P.17, but the entire amount of collection was not shown in ACS-50 register. In ACS-50 he has shown that only a sum of Rs.3,520/- was collected on 10.3.1989. Ex.P.18 is the relevant entry in ACS-50 register. The accused has deposited only Rs.3,520/- on 13.3.1989. Ex.P.19 is the pay-in-slip for the said amount. Ex.P.19 is in the hand writing of the accused. On 17.9.1989 the accused has collected Rs.570/- from Annai Sakthi Magalir Mandram by way of cash. In the accounts policy department copy the accused has shown that only a cheque for Rs.570/- was received. Ex.P.20 is the said document. But in the policy department copy he has mentioned that the said sum of Rs.570/- was received by way of cash. Ex.P.21 is the said document. The receipt copy for the accounts department will be in red colour and the receipt copy for the policy department will be in yellow colour. But the accused has not deposited either the amount received by him by way of cash or by way of cheque with the Canara Bank. Both Ex.Ps.20 & 21 were written by the accused in his own hand. On 6.9.1981 the accused has collected Rs.2,549/- from various persons. ExP.22 is the entry in ACS-50 register. The accused without remitting the said amount with the bank, has deposited only Rs.649/- on 12.6.1989. Ex.P.23 is the pay-in-slip which was in the hand writing of the accused. On 12.6.1989 the accused had collected Rs.972/- by way of cash. Ex.P.24 is the endorsement for the same on the back of the receipt. On the following day the accused had deposited only a sum of Rs.477/- with the Canara Bank. Ex.P.27 is the pay-in-slip. On 12.10.1989 the accused had collected Rs.7,234/- from various persons. Ex.P.26 is the entry for the same in ACS-50. The accused had not deposited the entire amount with the bank but he has deposited only Rs.6,234/- on 16.10.1989 under Ex.P.27, which was also written by the accused in his own hand. On 5.2.1990 the accused had collected Rs.8338.60 from 14 persons under Ex.Ps.28 to P.41 but the accused has not deposited the entire amount with the Canara Bank. He has deposited only Rs.6338.60 under Ex.P.42 receipt which was also prepared by the accused in his own hand. Ex.P.43 is the confession statement of the accused dated 15.11.1990 to the Regional Manager of the United India Insurance Company.

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4(h) P.W.4-Mathuravani Chandramoyli is the then Assistant Administrative Officer of the United India Insurance Company, Hosur, from October 1987 to July 1989. The United India Insurance Company, Dharmapuri Branch, comes within the jurisdiction of Regional Office of Hosur. Every month from every branch office a statement containing every months deposit by the branch offices to the Canara Bank will be furnished to the Regional Office at Hosur. Canara Bank also use to send a statement showing every months deposit by the United India Insurance Company, Dharmapuri Branch, and that in the Regional Office at Hosur, the statements will be scrutinized. But the United India Insurance Company, Dharmapuri Branch was not very regular in sending the above said statement. It has failed to submit the statement every month but it use to send the statement only for alternate months and some times it also send the account in a bulk. Noting the irregularity in receiving the statements, P.W.4 has sent a letter to the Dharmpari Branch of United India Insurance Company. He would depose that he was incharge of scrutinizing the statement of account sent by Canara Bank with that of the statement of accounts submitted by the branch office of the United India Insurance Company and this fact was also informed by P.W.4 to the Vigilence Officer P.W.1 during his enquiry.

4(i) P.W.5-Venugopal is the Development Officer of the United India Insurance Company, Dharmapuri Branch. He would also depose to the fact that from 1980 to 1990 the accused was working as a cashier in United India Insurance Company. He would depose that he has also paid the premium for the insurance policy with the accused while he was working as a cashier in the said United India Insurance Company and that he knows the signature of the accused. He would identify that Ex.Ps.2 to P.17 contain the signature of the accused.

4(j) P.W.6-Thiru.Srinivasan, is the then Manager of Indian Bank, Nallampalli Branch at Dharmapuri District, would depose that on 11.2.1991 the Investigation Officer in this case came to his office and enquired whether cheque No.667715 for a sum of Rs.570 was drawn by Annai Sakthi Magalir Mandram of Nallampalli and whether any amount has been disbursed under the said cheque and that he verified the relevant registers and found that the said cheque was not presented in the said bank. Ex.P.44 is the certificate issued by him to that effect.

4(k) P.W.7-Chokkalingam, is the then Manager of Canara Bank, Dharmapuri District during August 1989 till July 1992. He would depose that United India Insurance Company, Dharmapuri Branch, had an account with the Canara Bank and the said account number is U-2 and that the cashier of the said insurance company use to deposit the amount collected by the insurance company, Dharmapuri Branch on the very next day of collection. At the time of depositing the said amount he use to give pay-in-slip for the amount to be deposited. The said pay-in-slip was received by the bank and after receiving the same the said amount, the pay-in-slip will be signed by the officer of the bank and given the cashier who deposits the amount. P.W.7 would further deposed that the cashier use to

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deposit the collected amount as well as the cheque in his bank and for that purpose pay-in-slip will be prepared which contains all the particulars of the cheque. The cashier after receiving the same after affixing his seal and after signing the same sent to the officer and the officer use to handover the counter-foil to the person who gave the cheque. The receipt voucher Ex.P.20 was not issued by Canara Bank at that time of remitting the amount or cheque and that the recitals in Ex.P.20 in red colour was not endorsed by the employees of the Canara Bank.

4(L) P.W.8-Thiru.S.Vaithyanathan, is the Investigation Officer in this case. He would depose that as per the directions given by his Superintendent of Police Thiru.M.M.Rao, an Additional Superintendent of Police, has filed a case in Cr.No.56(a)/1990 against the accused under Section 409, 420, 467, 468, 471 r/w 467 r/w 477A IPC and under Section 13 (2) r/w 13(1)(c) & (d) of the Prevention of Corruption Act, 1988. Ex.P.18 is the FIR. The said case was sent to him by the Superintendent of Police for his investigation. After getting the permission from the Chief Metropolitan Magistrate, Chennai, he took up the investigation and went to the United India Insurance Company, Dharmapuri Branch, and perused the registers, which were sent by the United India Insurance Company, Dharmapuri Branch, by post. He examined the witnesses and recorded their statements on 11.2.1991 and 12.2.1991 and 1.3.1991. He has also examined the leave officer Sundararaj and after completing the investigation he has filed charge sheet under Section 409, 477A IPC and under Section 13(2) r/w 13(1)(c) & (d) of the Prevention of Corruption Act, 1988, on 27.3.1991.

4(m) When incriminating circumstances were put to the accused, the accused denied his complicity with the crime. The accsued has not examined any witnesses. On the basis of the oral and documentary evidence the learned trial judge found the accused guilty under the above said three charges and convicted and sentenced the accused to undergo three years RI under each of the above said provisions of law without imposing any fine. Aggrieved by the findings of the learned trial judge, the accused has preferred this appeal.

4(n) Now the point for determination in this appeal is whether the guilt against the accused under Section 409 & 477A IPC and under Section 13(1)(c) r/w 13(2) of the Prevent of the Corruption Act, 1988, has been proved beyond any reasonable doubt to warrant conviction under the above provisions of law?

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5.The Points:-

5(a) The learned counsel appearing for the appellant would contend that the investigation done in these cases is not proper, by basing his arguments on Ex.P.61 (in C.C.No.18/1998), Ex.P.45 (in C.C.No.17/1998) and Ex.P.18 (in C.C.No.16/1998) the First Information Reports filed by the the Deputy Suprindent of Police, SPC, CBI ACB, Madras, but the investigation was conducted by Sub-Inspector of Police-Thiru.Vaithyanathan, CBI/ACB, Madras, which is against the provision of

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law. The learned counsel for the appellant would contend that as per Section 17 of the Prevention of Corruption Act, 1988, (herein after referred to as the 'Act'), the Sub-Inspector of Police, CBI, Madras, is not competent to investigate and file charge sheet for the offence contemplated under the Prevention of Corruption Act, 1988. The learned counsel for the appellant focused the attention of this Court to Section 17 of the Act, 1988, runs as follows:-

> "Persons authorised to Investigate:-
>
> Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no police officer below the rank_
>
> (a) in the case of the Delhi Special Police Establishment, of an Inspector of Police;
>
> (b) in the metropolitan areas of Bombay, Calcutta, Madras, and Ahmedabad and in any other metropolitan area notified as such under sub-section (1) of Section 8 of the Code of Criminal Procedure, 1973, (2 of 1974), of an Assistant Commissioner of Police;
>
> (c) elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank,
>
> shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefor without a warrant;
>
> Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or makes arrest therefor without a warrant;
>
> Provided further that an offence referred to in clause (e) of sub-section (1) of the Section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police.

The learned counsel for the appellant pointing out clause (1) to Section 17 of the Act, contended that the Investigation Officer in these cases Thiru.Vaithyanathan belongs to CBI ie., Delhi Special Police Establishment, but he is only a Sub-Inspector not an Inspector. Hence, the investigation done by him is vitiated under the above provision of law. The learned counsel for the appellant in support of his contention would further vehemently argued that the proviso to Section 17 of the Act contemplates that only if an investigation is done by an officer of state government if he is below the rank of an Inspector of police then only he is empowered to investigate after getting permission from Metropolitan Magistrate or a Magistrate of the first class and that the permission obtained by the investigation officer under Ex.P.62 (in C.C.18/1998), under Ex.P.46 (in C.C.No.17/1998) and under Ex.P.19 (in C.C.No.16/1998) are not valid one. The proviso to Section 17 of the act says that if an officer not below the rank of an Inspector of police authorised by the State Government also can investigate by means of special order of the

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Government, but without an order of permission from the Metropolitan Magistrate or Magistrate of the first class. A careful reading of the above proviso to section 177 of the Act will clearly go to show that a police officer below the rank of Inspector of Police cannot investigate the case without permission from a Metropolitan Magistrate or the Magistrate of the first class. What applies to an officer below the rank of the Inspector of Police to the State Government under the proviso, in my view, equally applies to a police officer below the rank of Inspector of police CBI (Delhi Special Police Establishment) also. The investigation officer in these cases, a Sub-Inspector of Police CBI, has obtained the permission from the Chief Metropolitan Magistrate under Ex.P.62 (in C.C.18/1998), under Ex.P.46 (in C.C.No.17/1998) and under Ex.P.19 (in C.C.No.16/1998) to investigate these cases against the accused herein. So the contention of the learned counsel appearing for the appellant that the investigation itself is vitiated and the entire edifies of the prosecution case is to fall, is unsustainable because under Ex.P.62 (in C.C.18/1998), under Ex.P.46 (in C.C.No.17/1998) and under Ex.P.19 (in C.C.No.16/1998), permission was obtained by the Investigation officer from the Chief Metropolitan Magistrate.

5(b) The other limb of contention raised by the learned counsel for the appellant is that Ex.P.1 (in C.C.No.18, 16, & 17 of 1998) statements of the accused and Ex.P.51 (in C.C.18/1998), under Ex.P.17 (in C.C.No.16/1998) and under Ex.P.43 (in C.C.No.17/1998) consent letters of the accused cannot be used as against the accused since it is violation of the principle of natural justice and violation of fundamental rights of a citizen. The learned counsel for the appellant for the above said proposition of law had drawn the attention of this Court to Article 20 of the Constitution of India. Article 20 of the Constitution of India runs as follows:-

> "Protection in respect of conviction for offence:-
>
> 1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty grater than that which might have been inflicted under the law in force at the time of the commission of the offence.
>
> 2) No person shall be prosecuted and pushed for the same offence more than once.
>
> 3) No person accused of any offence shall be compelled to be a witness against himself."

Relying upon Article 20(3) of the Constitution of India, the learned counsel for the appellant would contend that Ex.P.1 (in C.C.No.18, 16, & 17 of 1998) statements of the accused and Ex.P.57 (in C.C.18/1998), under Ex.P.17 (in C.C.No.16/1998) and under Ex.P.43 (in C.C.No.17/1998) statement of the accused cannot be applied against the accused. This curious argument of the learned counsel for the appellant cannot be sustainable because as per Article 20(3) of the Constitution of India the accused cannot be compelled to given evidence against him. The fact remains that Ex.P.1 dated 27.09.1990 (in C.C.Nos.18, 16, & 17 of 1998)

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statements of the accused and Ex.P.57 (in C.C.18/1998), under Ex.P.17 (in C.C.No.16/1998) and under Ex.P.43 (in C.C.No.17/1998) dated 15.11.1990 are the confession statements of the accused not before the Inspector of Police but before the Vigilence Officer as well as before the Regional Managaer of the United Insurance Company, Coimbatore respectively. Particularly Ex.P.57 (in C.C.18/1998), under Ex.P.17 (in C.C.No.16/1998) and under Ex.P.43 (in C.C.No.17/1998) dated 15.11.1990 confession statements are to be construed as extra judicial confession. Under Section 24 of the Indian Evidence Act unless it is proved that the confession of an accused in a criminal proceedings is obtained by threat inducement or promise the said confession is admissible in evidence. Ex.P.57 (in C.C.18/1998), Ex.P.17 (in C.C.No.16/1998) and Ex.P.43 (in C.C.No.17/1998) are made before Regional Manager of the United India Insurance Company, Coimbatore, by the accused on 15.11.1990 itself, wherein the accused has clearly admitted all the charges levelled against him. Only when the accused was questioned under Section 313 of Cr.P.C. on 9.1.1997 before the trial Court, the accused would say that he has not given any confession statement. Till 9.1.1997 ie. for nearly 9 years from 15.11.1990 ie. Date of confession of the accused in Ex.P.51 (in C.C.18/1998), Ex.P.17 (in C.C.No.16/1998) and Ex.P.43 (in C.C.No.17/1998). The accused has not retracted the above said confession. Under such circumstances, the confession made by the accused under Ex.P.1 (in C.C.No.18, 16, & 17 of 1998) statements of the accused and Ex.P.51 (in C.C.18/1998), Ex.P.17 (in C.C.No.16/1998) and Ex.P.43 (in C.C.No.17/1998) are admissible in evidence under Section 24 of the Indian Evidence Act and the accused cannot take shelter under Artile 20(3) of the Constitution of India.

5(c) The next point urged before this Court by the learned counsel for the appellant is that under Article 20(2) of the Constitution of India no person shall be prosecuted and punished for the same offence more than once. The learned counsel for the appellant focused the attention of this Court to the conviction given by the trial Court both under Section 409 IPC and under Section 13(1)(c) r/w 13(2) of the Prevention of Corruption Act, 1988 and would contend that both the sections are similar in nature and the ingredient under the above said sections are one and the same except the punishment. In this regard it is pertinent to go through the above said sections of law. Section 409 IPC runs as follows:-

> "Criminal breach of trust by public servant, or by banker, merchant or agent_
>
> whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine"

Section 13(1)(c) of the Prevention of Corruption Act, 1988, runs as

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follows:-

"Criminal Misconduct by a public servant-

(1) A public servant is said to commit the offence of criminal misconduct,-

(a) .....

(b) .....

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entruted to him or under his control as a public servant or allows any other person to do so "

So to attract an offence under Section 13(1)(c) of the Prevention of Corruption Act there must be misappropriation of any property, entrusted to him, by a public servant. What is criminal breach of trust is defined under Section 405 IPC, which runs as follows:-

"Criminal breach of trust_

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

Explatnion 1- A person, being an employer of an establishment whether exempted under Section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or not who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force,shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to be said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

Explanation 2- A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948, (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid."

So the sum and substance of the offence under Section 409 IPC and offence under section 13(1)(c) of the Prevention of Corruption Act, 1988 are one and the same ie. Misappropriation of a property entrusted to a public

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servant. Admittedly the accused was a public servant, being a cashier of the United India Insurance Company at Dharmapuri Branch. The case of the prosecution is that he had misappropriated the amount collected by him by way of premium paid by the policy holders. So under such circumstances, as correctly contended by the learned counsel for the appellant, the learned trial judge has convicted the accused for the same offence of misappropriation under Section 409 IPC as well as under Section 13(1)(c) of the Prevention of Corruption of Act, 1988, which is violation of the principle of natural justice and principle of fundamental rules as enunciated under Section 20(2) of the Constitution of India. So I am of the considered view that the conviction and sentence against the accused under Section 477A IPC and also under Section 13(1)(c) of the Prevention of Corruption Act, 1988, alone will sustain and the conviction and sentence of the learned trial judge under Section 409 IPC in all the above three cases is to be set aside. Points are answered accordingly.

6. In fine, Crl.A.Nos. 400, 527 & 561 of 1999 are partly allowed and the conviction and sentence under Section 409 IPC in all the above three C.Cs.18, 16 & 17 of 1998 respectively on the file of the III Additional District Judge/Special Judge for CBI cases, Coimbatore, is set aside. In other respects the judgment in C.Cs.18, 16 & 17 of 1998 respectively on the file of the III Additional District Judge/Special Judge for CBI cases, Coimbatore, is confirmed. The sentence imposed under Section 477A IPC and under Section 13(1)(c) r/w 13(2) of the Prevention of Corruption Act, 1988, is to run concurrently in all the above three calendar cases. The trial Court shall secure the accused to undergo the unexpended portion of sentence.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ssv

To,
1.The III Addl. District Judge/
Special Judge for CBI Cases,
Coimbatore.

2. The Special Judge for CBI Cases, Coimbatore.

3. -do- through the Prl. Sessions Judge, Coimbatore.

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4. The Superintendent, Central Prison, Coimbatore.

5. The Inspector of Police,
   The Special Police Establishment,
    Central Bureau of Investigation/
   Anti-Corruption Bureau.
   Chennai.

6. The Public Prosecutor, High Court, Madras.

Ssv[co]
gp/13.3.

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